

Order

Michigan Supreme Court
Lansing, Michigan

October 17, 2006

Clifford W. Taylor,
Chief Justice

ADM File Nos. 2006-07, 2006-08

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

Amendment of
Rule 7.211 of the
Michigan Court Rules

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of Rule 7.211 of the Michigan Court Rules are adopted, effective January 1, 2007.

[Additions are indicated in underlining and deletions are indicated in strikeover.]

Rule 7.211 Motions in Court of Appeals

(A) [Unchanged.]

(B) Answer.

(1) [Unchanged.]

(2) Subject to subrule (3), the ~~The~~ answer must be filed within

(a)-(c) [Unchanged.]

(d) 14 days after the motion is served on the other parties, for a motion for reconsideration of an opinion or an order, to stay proceedings in the trial court, to strike a full or partial pleading on appeal, to file an amicus brief, to hold an appeal in abeyance, or to reinstate an appeal after dismissal under MCR 7.217(D);

(e) [Unchanged.]

If a motion for immediate consideration has been filed, ~~the answer must be filed within the time stated above, or as directed by the Court of Appeals.~~ all answers to all affected motions must be filed within 7 days if the motion for immediate consideration was served by mail, or within such time as the Court of Appeals directs. See subrule (C)(6).

(3) In its discretion, the Court may dispose of the following motions before the answer period has expired: motion to extend time to order or file transcripts, to extend time to file a brief or other appellate pleading, to substitute one attorney for another, for oral argument when the right to oral argument was not otherwise preserved as described in MCR 7.212, or for an out-of-state attorney to appear and practice in Michigan.

~~(3)~~(4) [Renumbered but otherwise unchanged.]

(C) Special Motions. If the record on appeal has not been sent to the Court of Appeals, except as provided in subrule (C)(6), the party making a special motion shall request the clerk of the trial court or tribunal to send the record to the Court of Appeals. A copy of the request must be filed with the motion.

(1)-(4) [Unchanged.]

(5) Motion to Withdraw. A court-appointed appellate attorney for an indigent appellant may file a motion to withdraw if the attorney determines, after a conscientious and thorough review of the trial court record, that the appeal is wholly frivolous.

(a) [Unchanged.]

(b) The motion to withdraw and supporting papers will be submitted to the court for decision on the first Tuesday ~~56 days after the appellant is served.~~

(i) 28 days after the appellant is served in appeals from orders of the family division of the circuit court terminating parental rights under the Juvenile Code, or

(ii) 56 days after the appellant is served in all other appeals.

The appellant may file with the court an answer and brief in which he or she may make any comments and raise any

points that he or she chooses concerning the appeal and the attorney's motion. The appellant must file proof that a copy of the answer was served on his or her attorney.

(c) [Unchanged.]

(6)-(9)[Unchanged.]

(D)-(E) [Unchanged]

Staff Comment: The amendment of subrule (B) extends the time to answer certain motions from 7 to 14 days, and establishes a new category of motions that can be decided in less than 7 days without delaying submission until the answer period has expired. The amendment also clarifies that answers to motions for immediate consideration and any motions affected by such a motion are to be filed within 7 days if the motion for immediate consideration was served by mail or within such time as the Court directs in light of the circumstances of the case.

The amendment of subrule (C) reduces from 56 days to 28 days the deadline for submission of a motion to withdraw as appointed counsel in an appeal from an order terminating parental rights. The 56-day deadline is retained for all other appeals

The staff comment is not an authoritative construction by the Court.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 17, 2006

Corbin R. Davis
Clerk